

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2010-16224
Issue No.: 3003, 3014
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 17, 2010
Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION


This matter was heard on March 17, 2010, pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and Claimant's request for hearing dated January 20, 2010. The Department of Human Services (DHS) reduced Claimant's Food Assistance Program (FAP) benefits based on the amount of Claimant's Unemployment Insurance (UI) benefits. Claimant also requested a hearing regarding DHS's determination of the FAP group composition in this case. DHS and Claimant both appeared at the March 17, 2010, hearing and presented testimony. Claimant also presented testimony from his [REDACTED].

ISSUES

1. Whether DHS determined the proper group composition to use in computing Claimant's FAP benefit allotment?
2. Whether DHS properly reduced Claimant's FAP benefits based on the amount of his UI benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On May 5, 2009, Claimant submitted an Application for FAP benefits.
2. Claimant's May 5, 2009, Application requested FAP benefits for himself and his .
3. Claimant signed the May 5, 2009, Application.
4. Claimant's May 5, 2009, Application stated that neither he nor his brother had any income.
5. On May 15, 2009, DHS sent Claimant a Verification Checklist, DHS Form 3503, requesting that he appear for an interview on May 21, 2009, and that he bring with him his driver's license and proof of income.
6. At the interview on May 21, 2009, DHS informed Claimant that, unless his brother's income was verified, he could not be included in the FAP recipient group.
7. On May 21, 2009, Claimant submitted a second Application, excluding his brother from the FAP group.
8. The May 21, 2009, Application states that Claimant is receiving UI benefits of \$1,152 per month for three months, April-June, 2009.
9. The May 21, 2009, Application reiterates that Claimant's brother has no income.
10. On February 1, 2010, Claimant's FAP benefits for himself were reduced from \$161 to \$129 per month.

11. Claimant received a January 14, 2010, DHS Notice of Case Action and requested a hearing by written Notice to DHS on January 20, 2010.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP), formerly known as the Food Stamp program, was established by the Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations (CFR). DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

BAM Section 105, “Rights and Responsibilities,” states that DHS Policy is to “protect client rights.” Section 105 states that the “Right to Apply” for all programs means that an application containing the minimum information must be registered on the date it is faxed, mailed or otherwise received. BAM 105, p. 1.

BAM 110, “Application Filing and Registration – Date of Application – All programs – Faxed and Paper Applications,” provides that:

The date of application is the date the local office receives the required minimum information on an application or the filing form. If the application or filing form is faxed, the transmission date of the fax is the date of application. Record the date of application on the application or filing form. BAM 110, p. 1.

I conclude that Claimant filed an Application on May 5, 2009, and that this Application contained the three minimum pieces of information required for a FAP Application: name, address and signature. I conclude as a matter of law that Claimant is entitled to appropriate FAP benefits, as set forth in this opinion, as of May 5, 2009. BAM 105, p. 1; BAM 110, p. 1; BAM 115, p. 19.

Next, pursuant to BAM 105, “Right to Request a Hearing – All Programs,” the Manual states:

The client has the right to request a hearing for any action, failure to act or undue delay by DHS or the Department of Community Health; *see BAM 600*. BAM 105, p. 3. (Italics added.).

Looking ahead to BAM 600, “Hearings,” as directed by BAM 105 above, the DHS Manual states:

Notice Requirements – All Programs

The application forms and each written notice of case action inform clients of their right to a hearing. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses.

The client must receive a written notice of all case actions affecting eligibility or amount of benefits. BAM 600, p. 1.

I conclude that Claimant was not informed in May, 2009, of his right to challenge the exclusion of his [REDACTED], from the FAP group. I find that Claimant received a Notice of Case Action dated January 14, 2010, and that he immediately requested a hearing in writing filed January 20, 2010. I find that he immediately followed up his request for hearing with a two-page letter and exhibits. The letter included detailed information about the exclusion of [REDACTED] [REDACTED] from the FAP group. I find that Claimant’s first opportunity to raise this issue was when he received the January 14, 2010, Notice of Case Action, and I find that he did so in a timely manner.

I make this finding because DHS asserted at the hearing that Claimant did not have the right to raise the issue of FAP group composition. I conclude that the January 14, 2010, Notice of Case Action was the only time at which Claimant was informed of his right to a hearing. I find he was not informed of his right to a hearing in May, 2009. I also note that Claimant’s

Notice of Hearing states that he requests a hearing for “Food Assistance,” and he did not limit his hearing request to any single issue, making it entirely appropriate for Claimant to avail himself of the opportunity to raise all of the issues of which he was aware.

In this situation I conclude that the Claimant appropriately and in a timely fashion, raised the issue of group composition in his FAP case.

I next turn to the procedures followed in this case. BAM 115 states that:

For **FAP only** schedule the interview as a telephone appointment **unless** specific policy directs otherwise. BAM 115, p. 15. (Bold print in original.).

BAM 115 states that an in-person hearing in a FAP case is not proper unless the client requests one, or the DHS Specialist determines it is appropriate for a reason such as suspected fraudulent information in the Application. This regulation states that the Specialist “must conduct a telephone interview at application before approving benefits.” BAM 115, p. 13.

I find that this did not occur in this case. I conclude that Claimant was entitled to a telephone interview and his right was not enforced. Because Claimant may file additional Applications in the future, DHS is directed to follow the proper telephonic procedures in any subsequent Application procedures.

Group Composition

I conclude that, although Claimant’s brother had no income, he was erroneously excluded from the FAP group based on unreported income. Claimant’s brother must be included in the FAP composition group as he lives with the Claimant and shares common living quarters and food arrangements with him. DHS is instructed to recalculate Claimant’s FAP benefits, effective May 5, 2009, including Claimant’s brother, [REDACTED], as a member of the FAP group. BEM 212, p. 2.

Claimant's Income

I conclude that Claimant was never provided the opportunity to verify all of his gross and net UI benefit amounts. I conclude as a matter of law that Claimant's UI income was zero from April 1, 2009-May 21, 2009, and that, on or about May 21, 2009, he received a lump-sum benefit of UI benefits retroactive to April 1, 2009. I direct DHS to recalculate Claimant's FAP benefits based on zero income for April 1, 2009-May 21, 2009. DHS must next calculate a lump-sum benefit received on or about May 21, 2009, to be treated as a one-time or accumulated benefit in the month of May, 2009. BEM 500, pp. 4-5; BEM 503, p. 24. Also, Claimant must provide verification of any and all gross, not merely net, UI benefits received from their commencement until the present. Claimant must include verification of subsequent UI benefits to determine whether or not he received Federal stimulus supplementary monies, and, if so, in what amounts.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, ORDERS as follows: DHS is REVERSED. DHS is Ordered to REINITIATE its verification process to allow Claimant another opportunity to submit verification needed to determine eligibility for FAP benefits as of the May 5, 2009, FAP Application. DHS is Ordered

to provide Claimant with sufficient time and assistance to obtain accurate gross and net UI benefit information from the Unemployment Insurance Agency or elsewhere, and to provide it to DHS.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 24, 2010

Date Mailed: March 24, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JL/pf

cc:

